

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA

4 v.

07 Cr. 541 (RPP)

5 DANIEL B. KARRON,

Conference

6 Defendant.

7 -----x

8 New York, N.Y.
9 August 8, 2007
4:15 p.m.

10 Before:

11 HON. ROBERT P. PATTERSON, JR.

12 District Judge

13 APPEARANCES

14
15 MICHAEL J. GARCIA
16 United States Attorney for the
17 Southern District of New York
One St. Andrews Plaza
New York, New York 10007

18 CHI T. STEVE KWOK
Assistant United States Attorney

19
20 RONALD RUBINSTEIN, ESQ.
Attorney for Defendant
21 Rubinstein & Corozzo, PC
260 Madison Avenue
22 New York, NY 10016
(212) 679-1844

1 (Case called).

2 THE CLERK: Is the government ready?

3 MR. KWOK: Yes, we are. Good afternoon again, your
4 Honor. Steve Kwok for the government.

5 MR. RUBINSTEIN: For the defendant, Rubinstein &
6 Corozzo by Ron Rubinstein. Good afternoon, your Honor.

7 THE COURT: Good afternoon, Mr. Rubinstein. Good
8 afternoon, Mr. Kwok.

9 Dr. Karron is excused from this conference, is that
10 correct?

11 MR. RUBINSTEIN: That's correct, your Honor.

12 THE COURT: Have you had a chance to see the
13 government's answer to your motion of August 2nd, Mr.
14 Rubinstein?

15 MR. RUBINSTEIN: Yes, your Honor. Frankly, it begs
16 the entire question. They have all of these documents which
17 are the property of Dr. Karron. They say in their letter that
18 they haven't accessed the CD's that were in these computers.
19 This is all we are looking for. We are looking for the records
20 that really are his records that he is entitled to under any
21 scenario.

22 THE COURT: How do not want to get them? How do you
23 want it to be done?

24 MR. RUBINSTEIN: We will provide an expert under the
25 government's supervision to duplicate the CD's and the hard

1 drives that are in this equipment. That will resolve all the
2 issues, your Honor. Virtually everything that is asked for are
3 items that were taken from Dr. Karron, items that were either
4 prepared by his then accountant --

5 THE COURT: I don't see that they are. But from you
6 what you just said, I gather what you were saying is that he
7 has things stored in these computers that he wants to bring
8 out.

9 MR. RUBINSTEIN: That is correct, your Honor.

10 THE COURT: There they are in the computer drive or
11 whatever, and he wants to get them out of there. What's your
12 thought? I don't know how the expert is going to isolate them.
13 Let's say he hires an expert and gets them out. A copy to each
14 side?

15 MR. RUBINSTEIN: The government says that they haven't
16 accessed these, they haven't looked at them, they don't want it
17 for their case. That's fine with me. We want to get back
18 either the originals or we'll take a copy. I don't see why
19 they are entitled to --

20 THE COURT: You have to have some way to verify that
21 what is then presented later is a copy.

22 MR. RUBINSTEIN: Yes, your Honor. We will provide to
23 the government, if we intend to introduce anything, copies of
24 that portion in both a hardcopy and CD format with a reference
25 to which CD's they already have the originals. They will still

1 have the originals of them, so there can't be any question that
2 there was anything deleted or changed or anything like that.
3 They will still have the original product.

4 THE COURT: I don't know that they do, from my reading
5 of Mr. Kwok's letter.

6 MR. KWOK: The government would oppose that. First of
7 all, I understand that the defendant had his computer seized.
8 If he wants them back, the proper procedure is to file a motion
9 in that civil forfeiture action to challenge the seizure of the
10 computer. It's not by using the process of criminal discovery
11 to sort of try to get stuff that he wants back from those hard
12 drives that I understand he may find useful for his research
13 and other personal purposes.

14 But for this criminal case, as I stated previously and
15 in my letter, the government has absolutely produced everything
16 that we have seen to defense counsel. I'm not aware of any
17 other thing that we have not produced. They have not made the
18 threshold showing of relevance or materiality under Rule 16 to
19 have those documents in those computers.

20 Second of all, in the two cases I cited, and there are
21 more in this circuit, the cost is on the defendant to produce
22 and copy those. As the defendant himself told this Court last
23 time, the cost of duplicating and searching these super-
24 computers with terabytes of memory in them may run somewhere in
25 the neighbor of 10,000 to \$20,000.

1 I don't know whether the defendant is now prepared to
2 represent to this Court that he is prepared to pay those
3 expenses in addition to any necessary costs incurred by the
4 government in having agents present to ensure the proper
5 downloading and copying of those electronic documents.

6 For all of these reasons, I simply don't think it is
7 relevant to the defense in this case. I would urge the Court
8 to deny the request for additional discovery.

9 THE COURT: As I understand it, indeed looking at your
10 letter, you say Rule 16's clear import is that defendant must
11 pay the cost of copying documents legally held by the
12 government, which indicates it does come within Rule 16. I
13 just got your letter half an hour ago and I haven't had a
14 chance to check the cases.

15 But if it says Rule 16's clear import is that
16 defendants, at least nonindigent ones, must pay the cost of
17 copying documents legally held by the government, why isn't Mr.
18 Rubinstein's proposal to hire an expert to download them,
19 something that he would have to pay the cost of --

20 MR. KWOK: Because those cases presume the relevance,
21 indeed the materiality, of the sought-for evidence, unlike in
22 this case, in which he hasn't even reached the threshold to
23 show the evidence that he is seeking for Rule 16.

24 MR. RUBINSTEIN: This is distinguishable, because
25 these are his own records, which changes a whole plethora of

1 arguments. He is entitled to these records. In the days of
2 hardcopy, I have been in cases where --

3 THE COURT: They haven't made copies of these things.
4 They may well be his records, but they are not going to use
5 them. It is not their intention to use them in this trial. Is
6 this the right forum, as Mr. Kwok says, for you to get those
7 back, or shouldn't you use another means of getting them back?

8 He doesn't seem to object to your getting it back.
9 It's just that perhaps it will confuse the discovery in this
10 action to have the materials obtained in that way. He says
11 they are not relevant to this case, and I must say that I can't
12 see that they are relevant.

13 MR. RUBINSTEIN: How can he say that? He has never
14 reviewed them. He has never looked at them. How can he
15 possibly say something is not relevant that he has never seen?
16 That is just disingenuous, your Honor.

17 THE COURT: I don't think it is disingenuous.

18 MR. RUBINSTEIN: I already highlighted the fact about
19 the American Express bills in request number 3. There are
20 backup slips that are in these computers that show what the
21 expense is for, who was present, and what-have-you. If that is
22 not relevant to show that this is an expense that was a
23 legitimate expense pursuant to this grant, I think it is a
24 Brady violation on the government's part.

25 I asked for the color images of the checks. There are

1 two different kinds of checks that are used. Each check,
2 depending on the color, has a different significance. We can't
3 tell the difference, because we don't have the colored check.
4 They can stand here and say this is what we have, this is what
5 we reproduced, 5,000 pages, but they haven't listed one page in
6 their response that says that something was produced that we
7 have requested.

8 MR. KWOK: I did indeed do that. That is the first
9 category of documents under my categorization of defense
10 counsel's request. I produced all the bank statements and
11 indeed the American Express statements that defense counsel
12 referred to.

13 THE COURT: Are they colored? His point is that
14 apparently they are not colored.

15 MR. KWOK: I'm not aware any of color. Again, I would
16 reiterate the government's invitation to counsel to come in, if
17 he wishes, to inspect the original copies that we have. I
18 don't know what he is referring to when he mentions color
19 copies. The originals that I have certainly are in better
20 shape than the duplicate copies. If he wishes, he can make
21 arrangements with our office to look at them.

22 With respect to the American Express statements, I
23 have produced statements showing every charge that has been put
24 on the company's card and the running month-to-month expenses.
25 What he is seeking is the charge slips with ink pen signatures.

1 I simply think that is duplicative and imposes unnecessary
2 costs on the government.

3 THE COURT: Do you have signatures on them?

4 MR. KWOK: We don't have those documents, and I'm not
5 aware of how to get them, frankly, in an accessible way. I
6 don't know whether American Express saves them somewhere.

7 THE COURT: If they are not in your possession --

8 MR. KWOK: It is not in my possession.

9 MR. RUBINSTEIN: They are in his possession your
10 Honor. They are scanned into these computers and they are on
11 these disks. He just wants to put his head in the sand and
12 say, we don't have them because we haven't looked at them.

13 It's a very simple solution, with all due respect,
14 your Honor. Give us the disks. Let us get copies of the disks
15 at our own expense with our own expert, with their people
16 sitting by. People make copies. They go and burn them. They
17 burn me copies of CD's all the time and send them to me. The
18 government does it, other lawyers do it. He is making this
19 sound like it's a Herculean task.

20 I am a computer novice, your Honor, and I know this
21 isn't a Herculean task. So I don't see why we are having this
22 debate with the government, who is resisting us getting records
23 that they don't know what's in the records that are on a
24 computer disk or on a hard drive that they have never seen. We
25 say they have them. The fact that they never looked at it or

1 they haven't gotten a search warrant to look at it, so be it.
2 We need these in order to prepare our case.

3 Also, your Honor, as you see, there are three other
4 credit cards that they have statements for. They have never
5 provided those to us. They never provided all the
6 correspondence between this accountant Hayes in the office of
7 the inspector general. They haven't provided any of these
8 things.

9 THE COURT: That is a little different.

10 MR. RUBINSTEIN: They haven't provided emails.

11 THE COURT: That isn't necessarily discoverable
12 material at this point.

13 MR. RUBINSTEIN: But it is on our computers. We have
14 copies of them. We want them. We're not looking to burden the
15 government. They are talking like they are going to be
16 burdened. They are not going to be burdened at all.

17 THE COURT: The last category it seemed to me was more
18 3500 material. Am I not right?

19 MR. KWOK: I think that's absolutely right, your
20 Honor.

21 THE COURT: That's 3500 material. But these other
22 things, Mr. Kwok, what about them? What about the receipts?
23 If they are on the computer and scanned in, why aren't they
24 documents which may contain evidence that somebody other than
25 Dr. Karron made these expenditures or got these things? You

1 say you don't have signed copies.

2 MR. KWOK: Most of the information that Mr. Rubinstein
3 is asking for is already presented in a different format by the
4 government. Last time he referred repeatedly to these Quicken
5 bookkeeping databases.

6 THE COURT: You say they are in a different form.
7 Supposing there are differences between the two? Supposing the
8 Quicken book is different from the American Express records?

9 MR. KWOK: First of all, there is no way for me to
10 verify, because the government has not seen these documents.
11 And it is not as easy as Mr. Rubinstein makes it out to be,
12 which is why I come back to Rule 16 and the relevance and the
13 materiality standard. These are not your usual desktop
14 computers.

15 We seized over 20 computers, and each of those
16 computers has a lot of memory in it. Unless the defendant can
17 pinpoint which computer and in which directory they are saved
18 under, I have spoken to an agent who is more knowledgeable than
19 I am about how these computers work, and it is really not as
20 easy as it sounds. It's not just a matter of just burning the
21 CD's. We have to search for them. It sounds like these may
22 not be saved in one place under one directory.

23 In light of the lack of relevance --

24 THE COURT: If we don't have a accurate map here, how
25 can I fashion an order that would protect you and protect them

1 so that whatever search had to be made for these documents was
2 made in a way that doesn't harm either party?

3 MR. KWOK: I think the Court does not need to reach
4 that issue, because there has been no showing of materiality
5 under Rule 16 that this is relevant to the defense.

6 THE COURT: It gather what you want is a full-fledged
7 affidavit with backup and things like that. You are entitled
8 to it. On the other hand, I don't know how you're going to
9 respond to that. When he has requests for these color-coded
10 checks, for instance, which you haven't seen, you're going to
11 have to go through and search them, I suppose all through the
12 16 big computers, and you're going to have to file opposing
13 affidavits based on that search. By the time you get done,
14 we'll have two or three months go by. That's fine, but what's
15 the alternative? Is there a better way to do it than going
16 through that that doesn't harm either party?

17 MR. KWOK: Here is a proposal. If Mr. Rubinstein
18 insists that he that these materials are relevant, and he does
19 make that representation to the Court, one solution that is
20 simplest I think would be for Mr. Karron to tell the government
21 under what computer.

22 As I understand it, they are all numbered, all these
23 computers have numbers posted on them. Number X computer has
24 these documents and they are stored under this directory under
25 the C drive, under this directory labeled Y. At that point if

1 the defendant is willing to bear the costs, the government will
2 send an agent to retrieve those documents.

3 Once he can tell us specifically not just what he
4 wants but where in those computers these electronic documents
5 are stored, I think that would take care of the logistical
6 difficulties that the Court mentions, if the Court is inclined
7 to allow the defendant some leeway to go beyond the dictates of
8 Rule 16.

9 MR. RUBINSTEIN: Judge, there is no backup.

10 THE COURT: It's not so much trying to get leeway as
11 that there seem to be a dispute about the validity of some of
12 the documents.

13 MR. KWOK: I understand.

14 THE COURT: If there is a dispute about the validity
15 of some of the documents, then it seems to me you want to have
16 both sides present when the search is made for whatever will
17 validate the document or evaluate the document.

18 MR. KWOK: Right.

19 THE COURT: I do think the government doesn't want to
20 run everything on the hard drive on 16 large computers and
21 produce thousands and thousands and thousands and thousands of
22 irrelevant documents that Mr. Karron really doesn't want. He
23 wants certain documents, not others, don't you agree, Mr.
24 Rubinstein?

25 MR. RUBINSTEIN: That's correct. The problem of

1 identifying the documents, where they are stored, since they
2 have all of the computers, they have all the lists of
3 everything that he has there. He'd have to access it. He'd
4 have to someone, not himself but someone else, access the
5 computer to find where those documents are within which
6 computers. He probably has a general idea.

7 THE COURT: I suppose there is an index, isn't there,
8 in the computer?

9 MR. RUBINSTEIN: Yes. I would think in the computer.
10 But they have the computer.

11 MR. KWOK: Again, as defense counsel says, these are
12 his documents. Presumably he would know where they are stored.
13 I know where I store my documents pertaining to this case.
14 It's under a certain directory. So if he would provide that
15 information to the government.

16 The last thing the government wants is to get into a
17 dispute at the site with the agent and the representative from
18 the defense about whether this document is relevant to this
19 case. So I want to have a list of all the documents that he
20 wants and the places where they are stored. Then we can send
21 an agent with a representative from the defense to go to the
22 site to download exactly those limited universe of documents.

23 THE COURT: Does he have a printout of the index?
24 Does he have a printout of the index on the computer, or is it
25 all something that is kept on the computer? Does either side

1 know?

2 MR. RUBINSTEIN: No, he doesn't have a printout,
3 Judge. It's one thing for the government to say --

4 THE COURT: He doesn't have a printout, OK.

5 MR. RUBINSTEIN: He didn't know he had this case.
6 There are documents in various places that relate to this case.

7 THE COURT: But the index will show that, right? He
8 has an overall index for his documents for his filing system?

9 MR. RUBINSTEIN: I'm sure that each computer has an
10 index somewhere for all the documents separately, not
11 necessarily one. I don't know the answer, Judge, of whether or
12 not there is one particular computer that lists every single
13 document and which computer is on it.

14 THE COURT: He must know how to access it.

15 MR. RUBINSTEIN: Absolutely.

16 THE COURT: Why can't you go through something like
17 this: First, you will give the government the information on
18 how to access the index; then they will produce the index in
19 hardcopy for him to mark those items that he wishes to access.
20 I would think the computer expert could retrieve those
21 documents at that point, at his cost. Each side will have a
22 copy if you want to have a copy, so you'll have a record that
23 indeed these documents came from these computers, each of those
24 computers. Is that kind of thing workable?

25 MR. KWOK: I'm not certain whether there is an index

1 in the computer to enable that solution.

2 THE COURT: Dr. Karron will have to tell us.

3 MR. KWOK: I think the easiest way, frankly --
4 unfortunately, Dr. Karron isn't here -- is for him to tell us,
5 if he were sitting in front of the computer, how would he
6 access these documents that he wants. Presumably, he saved
7 them so he could retrieve them at some later point.

8 He could tell us on this computer, if I were sitting
9 in front of it, this is where I would go. If he can tell us
10 that information with certain specificity, I'm more confident
11 that the expert will be able to find them. But if they were
12 just to say, I want XYZ documents, without telling us where to
13 find them, it is simply an exercise in futility, I believe.

14 THE COURT: I see the problem. It's like fishing in
15 the deep blue sea.

16 MR. KWOK: It is indeed.

17 THE COURT: Mr. Rubinstein, there are two
18 alternatives. I was suggesting that if he would tell us how to
19 access the indexes he needs, then the indexes would be produced
20 to him. Mr. Kwok says there might not be an index. Maybe he
21 can tell us without an index or maybe he can tell us the steps:
22 Go to the index on the computer, then press buttons such and
23 such and so and so for access to the necessary files, and then
24 press "print" to print.

25 MR. RUBINSTEIN: I would hope that that is available,

1 your Honor.

2 THE COURT: He ought to be able to tell us the
3 mechanism.

4 MR. RUBINSTEIN: Absolutely.

5 THE COURT: If we follow one of those things, it seems
6 to me, and then they don't have to fish around in those
7 computers trying to find what they have not looked at and
8 haven't done anything to save, there won't be such a waste of
9 time by people trying to comply.

10 But I do think they should get a copy of what he gets,
11 because you want to be able to know that indeed the documents
12 did come from the computer and not from some other source, and
13 there will be questions about the authenticity of the documents
14 if you do it some other way.

15 MR. KWOK: We'll certainly make a copy and ensure that
16 the copying will not alter in any form the content of those
17 documents.

18 I understand that defense counsel is agreeing to bear
19 the cost of the process. I don't know how much it is going to
20 cost. If his estimate is correct, it could be nontrivial.

21 THE COURT: I don't hear Mr. Rubinstein.

22 MR. RUBINSTEIN: As your Honor may recall, we are in
23 the process of making a Monsanto application to have property
24 released so that Dr. Karron can have those resources and pay
25 his lawyer's legal fees. The government is well aware of that.

1 THE COURT: That's the first I've heard of it.

2 MR. RUBINSTEIN: In the alternative, under CJA, he may
3 well be entitled to it.

4 The bottom line is that we will make every effort to
5 shoulder that expense. We don't expect the government to do
6 it. Whoever we produce for the government will be someone I'm
7 sure who the government will find to be of outstanding
8 credentials and reputation in the computer field.

9 THE COURT: I don't want to have the matter delayed
10 for a period of time. I want there to be some action here in
11 terms of the parties not only having the discovery but also
12 having access to whatever documents they think may bear
13 directly on their defense.

14 When is Dr. Karron coming back?

15 MR. RUBINSTEIN: He will be back on Monday, your
16 Honor.

17 THE COURT: Can we get something done here by
18 Wednesday?

19 MR. KWOK: To have the copying done?

20 THE COURT: To have him give you the directions.

21 MR. KWOK: As soon as we receive those directions and
22 if they are specific enough to be useful to tell the agents
23 where to go, then the government would make every effort to
24 expedite the retrieval and copying process. I don't want to
25 delay this case any longer than the Court does. I was hoping

1 for a trial date before this motion came up.

2 We will make every effort to expedite that once we get
3 the list from the defendant.

4 THE COURT: Is that satisfactory? Why don't we have a
5 conference next week sometime if necessary.

6 MR. KWOK: Can we set a date by which the defendant
7 will provide that instruction?

8 THE COURT: I was saying by Wednesday.

9 MR. KWOK: Thank you, your Honor.

10 THE COURT: That would be the 15th.

11 MR. KWOK: That's correct.

12 THE COURT: Depending on what those instructions are
13 and assuming they are satisfactory, how long? You can't tell
14 how many documents are involved or how lengthy the searches
15 would be.

16 MR. KWOK: How about a control date a week from that
17 point, so if we have any issues with the requests, we can have
18 them resolved.

19 MR. RUBINSTEIN: I'm going to be away. My daughter is
20 getting married in Las Vegas the week of the 20th.

21 THE COURT: Your daughter is going to get married in
22 Las Vegas? You shouldn't consent to that.

23 MR. RUBINSTEIN: I have no control, Judge. As a
24 matter of fact, August in Las Vegas is too hot. She's 41 and
25 she says she's liberated.

1 THE COURT: She is probably very liberated.

2 MR. RUBINSTEIN: I can tell you that she is being
3 married by an Elvis Presley interpreter, so I have nothing else
4 to say about this wedding. I'm invited and I'm going and I'm
5 doing all the right things, Judge.

6 MR. KWOK: How about two weeks from the submission
7 date, which would take us to the 29th of August?

8 THE COURT: 22nd. You're going to be away how long?

9 MR. RUBINSTEIN: I would be away for a week. I would
10 ask your Honor that we put it down for Monday the 27th of
11 August.

12 THE COURT: All right.

13 MR. RUBINSTEIN: If we can't resolve things by then,
14 we will have a problem. I can always be in touch with Mr.
15 Kwok.

16 THE COURT: If you have problems early next week, ask
17 for a conference.

18 MR. KWOK: Certainly. So August 27th is the control
19 date.

20 THE CLERK: 4 o'clock.

21 MR. KWOK: OK.

22 MR. RUBINSTEIN: Sure.

23 THE COURT: We expect Karron to have given something
24 to Mr. Kwok.

25 MR. RUBINSTEIN: We intend to give it to him by the

1 15th.

2 THE COURT: Right. If he can't or for some reason we
3 have to approach it another way, maybe you guys can work it
4 out.

5 MR. KWOK: Yes. I'll certainly look at the list and
6 discuss with the agent and discuss with defense counsel to see
7 whether it is a workable plan. If we can work it out, I'll
8 produce the documents requested as expeditiously as possible.
9 If not, we'll try to schedule a conference. If not, we will be
10 in front of the Court again on August 27th.

11 THE COURT: My trial for next week is off. Anything
12 else we should take up?

13 MR. KWOK: I think time is being excluded. But just
14 in an abundance of caution.

15 THE COURT: Time is excluded until the 27th if it
16 hasn't been excluded already, August 27th.

17 MR. KWOK: Thank you, your Honor.

18 MR. RUBINSTEIN: Thank you, your Honor.

19 (Adjourned)

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